



The "Television Without Frontiers" Directive, Cornerstone of the European Broadcasting Policy

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Introduction

The European Union not only aims at ensuring free movement of capital, goods and persons; it also seeks to create the conditions necessary for unrestricted broadcasting across the territory of its Member States. In this context, the "Television Without Frontiers" Directive establishes the legal framework for television broadcasting activities in the European Union; it is usually considered as the "cornerstone" of the European broadcasting policy. Its main objective is to co-ordinate national rules of the Member States in order to remove barriers to an internal market for television broadcasting and related services in the Union. This article outlines the main provisions governing broadcasting activities in the specific fields covered by the "Television Without Frontiers" Directive, in particular: the law applicable to broadcasters, the principle of freedom of reception and retransmission, the promotion of production and distribution of European programmes, the access to major sport events and the protection of minors.

European Television in the Digital Age

The advent of digital television, with the launching in 1995-1996 of the first digital services in Europe, has considerably changed the European audiovisual landscape. With increased deregulation and the introduction of new technology, the broadcasting sector is going through major developments. Digital technology generates a multiplication and diversification of broadcasting channels and services, as well as a convergence of the telecommunications, media and information technology sectors¹.

The 1997 and 1998 issues of the Statistical Yearbook of the Strasbourg-based European Audiovisual Observatory confirm the trend: the progress of digital technology in Europe has led to a significant growth in the number of operators, particularly pay-TV and pay-per-view services. At the beginning of 1997 there were over 330 digital channels broadcast by satellite, as against only 10 one year before². As of 1 January 1998, more than 480 digital programmes broadcast by satellite could be received in Europe³. As regards pay-per-view services, 17 providers gave customers access to some 200 channels in 1998, compared to 6

¹ See in particular the Communication adopted by the European Commission on 10 March 1999 on the results of a public consultation on the Green Paper on the convergence of the telecommunications, media and information technology sectors (COM (97) 623). See also European Audiovisual Observatory, *Legal Guide to Audiovisual Media in Europe*, p. 20 (English version).

² European Audiovisual Observatory, *1997 Statistical Yearbook*.

³ European Audiovisual Observatory, *1998 Statistical Yearbook*.

services providing only 42 channels in 1996⁴. Digital television not only brings more channels on the European audiovisual scene; it also considerably increases the offer for a more diversified range of broadcasting programmes through specialised channels. Consequently, 1997 saw the launch of a number of digital multichannel packages in Europe, such as Canal Satellite in Spain, Premiere in Germany and BSkyB in the United Kingdom. Most of these packages offer very diversified, thematic programmes (cinema, sport, information, music, travel, etc.)⁵.

The demand for audiovisual products (cinema, television, video, multimedia) should considerably increase during the next five years. The growth in total income for the industry over the period from 1995 to 2005 is estimated at 69%, from euro 31,847.7 million to euro 53,871.1 million, and should be essentially generated by the development of television and new forms of audiovisual consumption such as pay-per-view, video-on-demand and multimedia services⁶.

In addition, the European audiovisual landscape has been recently transformed by a number of large-scale strategic alliances between traditional operators of classical TV or pay-TV system, the programme owners and the owners of facilities such as cable or satellite. Mergers and joint ventures are generally viewed favourably by the European competition authorities in so far as they ensure the development of the Information Society by providing new audiovisual content and services⁷.

However, the European Commission also intends to ensure that the audiovisual market remains open to competition; therefore, it carefully sees to it that the said market not be distorted or foreclosed by dominant positions and access barriers such as exclusive broadcasting rights (particularly as regards sport events) and State aid to the broadcasting sector. The Member States have therefore to ensure that pluralism and competition are maintained in the audiovisual sector by preventing the creation of dominant positions resulting from agreements such as concentrations, mergers and acquisitions of businesses. A number of concentrations have already been prohibited by the European Commission in the broadcasting sector, such as the cases *Bertelsmann/Kirch/Première* and *Deutsche Telekom/Beta Research*, both projects aimed at setting the framework for digital pay-TV in Germany but were considered by the Commission as creating very high access barriers for potential competitors in the areas of programming, decoders and cables.

The "Television Without Frontiers" Directive was adopted by the European Council on 3 October 1989⁸. However, the rapid changes in the audiovisual market since the beginning of the nineties required a substantial revision of the terms of said Directive: therefore, further to a proposal made by the European Commission in May 1995, a revised version of the Directive was adopted on 30 June 1997⁹ that provides for an up-to-date regulatory framework adapted to digital broadcasting. Certain legal concepts have been tightened up and clarified in the new Directive, in particular as regards the Member States' jurisdiction over broadcasters. In addition, rules governing teleshopping and coverage of major events have been introduced, and protection for children has been increased¹⁰.

⁴ European Audiovisual Observatory, *1998 Statistical Yearbook*.

⁵ France is the only market in Europe where three digital satellite television platforms currently coexist with cable television and terrestrial pay-TV: *Canal Satellite*, *AB-Sat* and *TPS*. *TPS* was created by *TF1*, *M6*, *France 2*, *France 3*, *France Telecom* and *Suez Lyonnaise des Eaux*; the agreement constituting this new digital operator was cleared by the Commission in March 1999, which considered that the emergence of *TPS* should have pro-competitive effects on the market and would be favourable to consumers (See press release of the European Commission IP/99/161 of 8 March 1999).

⁶ Norcontel, *Economic Implications of New Communication Technologies on the audiovisual markets*, March 1997, p. 173.

⁷ M. J.F. Pons, *The Future of Broadcasting*, Conference on the Future of Broadcasting, London, June 29, 1998.

⁸ Council Directive 89/552/EEC of 3 October 1989 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L298 of 17 October 1989, p. 23).

⁹ Directive of the European Parliament and of the Council 97/36/EC of 30 June 1997 amending the Council Directive 89/552/EEC (OJ C202/60 of 30 July 1997, p. 60).

¹⁰ See European Audiovisual Observatory, *Legal Guide to Audiovisual Media in Europe*, pp. 7 et seq. (English version).

The Law Applicable to Television Broadcasters: Principle of Establishment

Directive 89/552 did not contain any provision specifying the criteria that determine the jurisdiction of Member States over broadcasters. The establishment of this legal connection is, however, essential to guarantee the actual implementation of the Directive's fundamental rule, which stipulates that the broadcasting of television programmes across the territory of the European Union may not be restricted by the Member States, provided that such programmes comply with the national regulations of their country of origin. In practice, difficulties have arisen in determining which country has jurisdiction over a television channel for the purposes of the Directive. In such cases, indeed, existing disparities in the concept of jurisdiction between the various Member States may lead to negative or positive conflicts of jurisdiction, which in turn can jeopardise the effective implementation of the Directive.

Through several judgements rendered subsequently to the entry into force of the 1989 Directive, in particular the cases *Commission v. United Kingdom*¹¹ and *Commission v. Belgium*¹², the European Court of Justice has made a major contribution to the clarification of the concept of jurisdiction¹³. Following a recommendation of the Commission, the Court of Justice enshrined the so-called principle of the place of establishment: a television broadcaster comes under the jurisdiction of the Member State in which it is established. The divergence, which existed in this respect between the Directive and the European Convention on Transfrontier Television¹⁴, has been removed by the Protocol amending the Convention that was adopted on 8 September 1998 by the Committee of Ministers of the Council of Europe¹⁵.

In a judgement rendered on 5 June 1997 in the case *VT4 v. Flemish Community of Belgium*¹⁶, the Court of Justice further held that broadcasters established in more than one State fall within the jurisdiction of the Member State where they have their centre of activity, namely where scheduling decisions are taken. In a matter relating to non-European TNT/Cartoon programmes, the Court of Justice also ruled that the origin of the programmes broadcast by television channels, and the conformity of such programmes with Articles 4 and 5 of the "Television Without Frontiers" Directive, are irrelevant in determining the Member State having jurisdiction¹⁷. It follows that compliance with the provisions of the Directive must be ensured by the State where the broadcaster is established, and that other Member States are not allowed to control the content of televised programmes broadcast from the State of establishment, even if those programmes are not of European origin. An exception applies, however, if such programmes come within the scope of Article 22 of the Directive relating to the protection of minors.

Further to the development triggered by the Court of Justice's case law, and to a formal proposal of the European Commission presented in May 1995 to the European Parliament and to the Council of the European Union, the concept of jurisdiction has been defined by Directive 97/36: according to Article 2.3 of the revised Directive, a broadcaster is deemed to be established in the Member State where it has its head office and where scheduling decisions are taken. If the broadcaster's head office is not located in the same Member State where decisions on programme schedules are taken, the broadcaster shall be deemed to be established in the Member State where a significant part of his workforce operates. This rule is completed by specific provisions covering cases where a significant part of the staff carries out activities in several Member States, or in none of them. Finally, the Directive provides that if a television channel has its head office in a Member State whereas decisions on programme schedules are taken outside the European Union (or vice versa), the channel is

¹¹ Case C-222/94 *Commission v. United Kingdom* [1996] ECR I-4025.

¹² Case C-11/95 *Commission v. Belgium* [1996] ECR I-4115.

¹³ See also European Audiovisual Observatory, *Legal Guide to Audiovisual Media in Europe*, pp. 8 and 13 (English version).

¹⁴ The Convention was essentially based on the criterion of the place of initial transmission or, in the case of satellite broadcasting, the place where the up-link is located.

¹⁵ The Protocol was adopted with a view to aligning the European Convention on Transfrontier Television with the "Television Without Frontiers" Directive and to developing a common and coherent approach to broadcasting activities in Europe. For more detail on the parallelism between the Directive and the Convention see European Audiovisual Observatory, *Legal Guide to Audiovisual Media in Europe*, pp. 24 et seq. (English version).

¹⁶ Case C-56/96 *VT4 v. Flemish Community of Belgium* [1997] ECR I-3143.

¹⁷ Case C-14/96 *Criminal proceedings against Paul Denuit* [1997] ECR I-2785.

considered to be established in the Member State where its head office is located (respectively where management decisions are taken) provided that a significant part of the staff operates in that State.

It has to be noted, however, that the Directive does not apply to broadcasts intended exclusively for reception in countries outside the European Union provided that these programmes cannot be viewed directly or indirectly by the public of any Member State.

Freedom of Reception and Retransmission of Television Broadcasts

Article 2a of Directive 97/36 provides that the Member States must ensure freedom of reception and may not restrict the retransmission on their territory of television programmes broadcast from other Member States for reasons falling within the fields co-ordinated by the Directive. As mentioned before, an exception to this rule is made by Article 22 for serious infringements of the provisions governing protection of minors.

According to Article 2 (1) of the Directive, each Member State is responsible for ensuring that all television programmes transmitted by broadcasters under its jurisdiction comply with the provisions of the Directive as well as with the national regulations applicable to broadcasts intended for the public in that Member State. It follows that the receiving State may not apply to programmes emanating from another Member State legal provisions specifically aimed at controlling the content of television broadcasts at national level. Therefore, although Article 3 (1) of the Directive allows Member States to adopt more detailed or constraining rules in the areas covered by the Directive for broadcasters under their jurisdiction, such rules may not be applied to programmes broadcast by cross-border channels located in other Member States.

In this regard, the European Court of Justice distinguishes between national legislation in areas not covered by the Directive (such as the protection of consumers against misleading advertising) and matters that are considered to be already fully regulated by Community law, like the protection of minors. For example, in the first case the receiving State may adopt measures aimed at protecting the interests of consumers against national advertisers, but is not allowed to take any measure to control television programmes broadcast by foreign operators because only the Member State having jurisdiction over the broadcasters concerned is responsible for its control¹⁸. By contrast, where Community law has reached a high level of harmonisation and the Directive provides for a complete set of rules in a specific area, the receiving Member States are prohibited from taking any further reaching national measures no matter what channel is concerned.

In practice, the application of the principle of freedom of movement has sometimes been restricted. In a report published in December 1996¹⁹, *KPMG* pointed out that "evidence from reported cases and infringement proceedings (...) provides a number of examples where Member States have sought to prevent cross-frontier broadcasters from transmitting programmes into their territory, which did not comply with national regulations or objectives". In particular, several cases have been brought before the Court of Justice concerning national provisions that submit cross-border channels licensed in another Member State to specific licensing requirements.

¹⁸ In a judgement rendered on 9 July 1997, the European Court of Justice held, however, that the "Television Without Frontiers" Directive does not preclude a Member State from taking measures against an advertiser under general legislation on protection of customers with regard to misleading advertising broadcast from another Member State, provided that those measures do not prevent the retransmission as such of television broadcasts coming from that other Member State in the territory of the Member State taking the measure (Case C-34/95 *Konsumentombudsmannen v. De Agostini and TV-Shop* [1997] ECR I-3843). For further information on the judgement see also European Audiovisual Observatory, *Legal Guide to Audiovisual Media in Europe*, pp 13 et seq (English version).

¹⁹ *KPMG, Audiovisual Services and Production*, The Single Market Review Series, Subseries II - Impact on Services, December 1996.

This was the case, for instance, in the matter *Commission of the European Communities v. Kingdom of Belgium*²⁰ where the Court of Justice pronounced in September 1996 a judgement forbidding a preliminary licence system for cable distribution of television programmes broadcast from other Member States because this control system amounted to a denial of freedom of circulation. In a similar case, the European Commission on 7 December 1998 decided to refer France to the European Court of Justice for failure to comply with certain provisions of the "Television Without Frontiers" Directive, particularly in relation to a prior authorisation system applicable to cable retransmission of televised programmes broadcast by channels that come within the jurisdiction of other Member States.

Promotion of the Production and Distribution of European Works

Broadcasters are the predominant partners of the film production and distribution industry in Europe. Their investments in this sector are on the rise and made either to public film and television funds, or directly to independent producers, in particular through co-productions and pre-sales agreements²¹.

The "Television Without Frontiers" Directive also provides support to European films by setting quota requirements for the promotion of European works on television. These provisions, however, do not apply to television broadcasts that are intended for local audience and do not form part of a national network.

According to Article 4 of the Directive, the Member States must ensure, "where practicable and by appropriate means", that broadcasters under their jurisdiction reserve for European productions a majority proportion of air time, excluding time devoted to news, sports, games, advertising, teletext services and teleshopping. Furthermore, Article 5 of the Directive provides that European television channels must, under the same conditions, reserve at least 10% of their transmission time - or alternatively, at the discretion of the Member States, at least 10% of their programming budget - to European works created by producers who are independent of broadcasters.

A certain flexibility is granted for the implementation of the quota requirements in so far as these proportions may be achieved progressively, on the basis of appropriate criteria, and while taking into account the broadcaster's informational, educational, cultural and entertainment responsibilities. The implementation of Articles 4 and 5 of the Directive is supervised by the European Commission to which all Member States must submit, every two years, a report containing a statistical statement on the achievement of the quotas. Any failure to achieve the proportion required must be reported and explained, and so must measures adopted or envisaged to remedy the situation.

For the purposes of Articles 4 and 5, "European works" means any audiovisual productions originating from Member States or from countries that are parties to the European Convention on Transfrontier Television²². These productions have to be made chiefly with

²⁰ Case C-11/95 *Commission v. Belgium* [1996] ECR I-4115.

²¹ Centre national de la cinématographie/European Audiovisual Observatory, *Public Aid Mechanisms for the Film and the Audiovisual Industry in Europe, Vol. I: Comparative Analysis of National Aid Mechanisms*, 1998, pp. 45 and 47. See also the report of the High Level Group on Audiovisual policy: *The Digital Age – European Audiovisual Policy* (October 1998) URL: http://europa.eu.int/comm/dg10/avpolicy/index_en.html. Concerning this report see also European Audiovisual Observatory, *Legal Guide to Audiovisual Media in Europe*, pp. 9-10 (English version), and IRIS 1998-10: 7 also available through the Observatory's Internet site at www.obs.coe.int.

²² The Protocol to amend the 1989 European Convention on Transfrontier Television was adopted on 9 September 1998 with similar objectives to those defined by the "Television Without Frontiers" Directive. To date, the Convention has been ratified by 21 States: Austria, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Liechtenstein, Malta, Norway, Poland, San Marino, Slovakia, Spain, Switzerland, Turkey, United Kingdom, and the Holy See. The Protocol has been ratified by Bulgaria, Cyprus, Estonia, Liechtenstein, and Slovenia. See IRIS 2000-5: 9.

authors and workers residing in the Member States of the European Union and must comply with one of the following conditions: (1) they are made by one or more producers established in the European Union, or (2) they are supervised and actually controlled by producers in the European Union, or (3) the contribution of co-producers of the Member States to the total co-production costs is preponderant and the co-production is not controlled by a producer established outside the European Union.

The definition of European works also includes productions originating from other European countries outside the European Union if such audiovisual works are made exclusively, or in co-production with producers from within the European Union, by producers established in European countries outside the European Union that have concluded audiovisual agreements with the European Union; in addition, these productions must have been made mainly with authors and workers residing in one or more Member States of the European Union.

The concept of European work has been extended by Directive 97/36 to include co-productions with any countries outside Europe: audiovisual productions that are not "European works" within the above meaning but are made under the terms of bilateral co-production treaties entered into between Member States of the European Union and other States are regarded as European works if the co-producers from the European Union have a majority stake in total production costs, provided that such audiovisual works are not controlled by producers established outside the territory of the European Union.

The Commission, in its 3rd monitoring report on the implementation of Articles 4 and 5 of Directive 98/552 during the period 1995-96²³, stated that the objectives of these provisions were overall satisfactorily met by television channels in most Member States of the European Union. In some of them broadcasters have sometimes gone considerably beyond the quota requirements set by the Directive. In 1998, the percentage of European (national and non-national) feature films broadcast by leading unencrypted television channels, compared with the total number of films broadcast, amounted to 44% in Germany, 49% in Italy, and exceeded 60% in France, while in the United Kingdom, where US films still counted for about 70% of the films broadcast on television, this percentage dropped to 25%²⁴.

However, recently launched channels with a limited audience appear to have difficulties in achieving the quota requirements of the "Television Without Frontiers" Directive, as in their first months or years of existence these broadcasters often not afford to acquire a large number of European programmes, which are usually more expensive than foreign productions. Special-interest channels also have difficulties in obtaining on the market European programmes matching the specific criteria of their target audience; this is particularly the case for film channels where the broadcasting of European works is closely tied to the screening of films in cinemas and to box-office successes. Thus, the type of programmes in which these channels specialise may affect their ability to comply with the quota requirements set by the "Television Without Frontiers" Directive.

Pay-TV broadcasters may also have difficulty in achieving the quota set by the Directive, as they are to a certain extent dependent on the films shown in cinemas: their scheduling mostly reflects box-office successes, out of which European films only account for a minority proportion of feature films shown in the cinemas of the Member States. Finally, the Member States sometimes differ in their respective interpretation of the "where practicable" condition

²³ COM (98) 199 final.

²⁴ European Audiovisual Observatory, *European Films on TV Screens*, 4^{ème} Forum européen du cinéma, Strasbourg, 11-16 November 1999. See also European Audiovisual Observatory, *Legal Guide to Audiovisual Media in Europe*, p. 11 (English version).

relating to the application of quotas, and therefore in the degree in which they seek to enforce the Community requirements upon broadcasters.

Directive 89/552 provided that television channels were not allowed to show any cinematographic work - unless otherwise agreed upon between the rights holders and the broadcaster - until two years after their release in cinemas in one of the Member States, this period being reduced to one year for films co-produced by the television channel. However, contractual freedom has proved to be an essential factor in film profitability, considering the substantial financial investments required for the production of feature films. These investments constrain producers to make the most of all forms of distribution in order to guarantee the commercial success of a film. The European feature film and television industries attach therefore great importance to the principle of contractual freedom and are by and large opposed to the introduction of additional regulations that would limit their latitude. This concern was taken into consideration by the European Union legislator and, as a consequence, periods for which feature films could not be released on television after being first shown in cinemas have been abolished under Directive 97/36. According to Article 7 of the revised "Television Without Frontiers" Directive, the only remaining constraint in this area is the obligation on Member States to ensure that the periods agreed between television channels and rights holders concerning the broadcast of cinematographic productions are complied with.

Access to Major Sports Events

With the deregulation of the television sector in recent years, as well as the development of new broadcasting technologies, television viewers benefit from an increasing offer of theme channels, pay-TV and pay-per-view services providing broadcasting of sport events of national or international importance. International sport events, such as the Formula 1 Championship and the Olympic Games, gather a massive audience and have an essential market value for television channels. Football is one of the most popular sports around the world in terms of television coverage and average audience results, particularly in European countries such as Italy, France, the United Kingdom, and Germany.

Sport federations are well aware of the importance of television, in particular for major sporting events where the sale of exclusive rights by broadcasters has become the prime financial source for professional sport; television attracts indeed both huge audiences and a large range of sponsors. In France, where football is by far the most televised sport, the total hours devoted to sport in general increased by 35% from 1997 to 1998, certainly as a consequence of the Winter Olympic Games and of the Football World Cup. In 1998, French private television channels devoted 60% of their time to sport, mainly those for which they had acquired exclusive rights such as football, Formula 1 or golf²⁵. In turn, there is a growing inter-penetration of the sporting world and television. Some large audiovisual groups, such as *Canal+* in France, have become increasingly involved in sporting activities; they control sport teams and acquire exclusive rights for teams in order to ensure related broadcasting rights.

The substantial increase in competition and prices for the acquisition of sports broadcasting rights over the last few years evidences that this sector represents more than ever a very important area economically. While these developments may have a positive impact on the broadcasting sector inasmuch as they increase competition in the market, with the growth of pay-TV concerns have arisen about the consequences of certain commercial practices in the

²⁵ First European Conference on Sport – Olympia 21 and 22 May 1999, *Relations between sport and television*, Discussion paper for the Working Group of the European Commission, Brussels, 26 April 1999, version 2.

exploitation of broadcasting rights to sport events on the European television landscape²⁶. Competition in the market might indeed be excessively restricted, and popular sports might be excluded from coverage on free television if some major pay-television channels buy up sports rights to attract a large number of new subscribers and build up audience.

The European Parliament and the Commission have considered essential to protect the right of information and to ensure wide access to free television coverage of sports of major importance for the public in order to avoid that such access be limited to subscribers of pay-television channels. Free access to television coverage of major events has been considered essential in order to avoid that viewers be compelled to invest in additional equipment such as decoders, or to pay for cable subscription before they are able to view such events. This is one important innovation of Directive 97/36, which provides that the Member States may take measures to ensure that broadcasters under their jurisdiction do not broadcast on an exclusive basis events of major importance – in particular important sporting fixtures - in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events on free television via live coverage or recorded broadcasting.

The new Article 3a of Directive 97/36 lays down framework conditions according to which the public may be guaranteed free access to broadcasts of major events. Each Member State can draw up a list of events, national or non-national that it considers to be of major importance and that have to be broadcast unencrypted²⁷. Measures taken by the Member States must be notified to the Commission which shall review their compatibility with Community law and seek the opinion of the Contact Committee. Measures adopted by the Member States are communicated to the other Member States and published in the Official Journal of the European Communities. Finally, paragraph 3 of Article 3a further provides that Member States must ensure that broadcasters under their jurisdiction do not exercise exclusive rights in such a way that a substantial proportion of the public of another Member State is deprived of the possibility of following on free television events designated by that other Member State as being of major importance.

As mentioned before, broadcasting rights to sporting events are usually purchased on an exclusive live basis. This is an accepted commercial practice in the sector, as it guarantees the market value of a given sport programme which by nature is economically profitable for only a very short period of time. Exclusivity implies also a substantial increase in advertising or sponsorship revenue, as sports programmes are usually devoted to a target audience. According to a report published by Eurodata TV on the 1998 major sports events²⁸, in the Netherlands, the football World Cup led to an increase of 37 minutes in the daily viewing time per individual between June 1997 and June 1998, and to an increase of the average market share of the television channel *NED2*, the exclusive broadcaster of the 1998 Football World Cup, from 14.1% to 33.1%. For sports organisers, the sale of exclusive rights is, therefore, a way of ensuring the maximum short-term profitability of the event organised. It is also a way to build up audience and to improve the image and prestige of the channel, in particular for pay-TV channels devoted to sports events. Exclusivity granted on a short-term basis does not in principle raise serious competition difficulties. However, problems may

²⁶ A.M. Wachtmeister, *Broadcasting of sports events and competition law*, Competition Policy Newsletter, June 1998, Number 2.

²⁷ In Denmark, for instance, Paragraph 3 of the Executive Order N° 808 of 19 November 1998 on the exploitation of TV rights to events of major interest to the public (*Bekendtgørelse om udnyttelse af tv-retigheder til begivenheder af væsentlig samfundsmæssig interesse*) lists events such as the Summer and Winter Olympic Games, the football World and European championships, as well as the handball World and European championships, and Paragraph 4 of said Order provides that these events have to be broadcast on television channels reaching at least 90% of the Danish population. Such channels must provide free television coverage, or must not require the payment of any subscription fee exceeding 25 DKK per month. See IRIS 2000-3: 7 and IRIS 1999-2: 13 Concerning the transposition of Article 3a of the Directive in other countries see IRIS 2000-5: 11 and IRIS 1999-9: 11 (The Netherlands), IRIS 2000-3: 8 and IRIS 1999-2: 13 (United Kingdom), IRIS 1999-9: 11 (Spain), IRIS 1999-7: 11 and IRIS 1998-8: 10 (Italy), IRIS 1999-6: 13 (Belgium/Flemish Community), IRIS 1998-2: 12 and IRIS 1998-3: 7 and 10 (Germany).

²⁸ Eurodata TV, *1998: Worldwide Sport Events, Audience Analysis of the 1998 Main Sport Events*.

arise if the scope of exclusivity stretches over a long period of time or encompasses a wide range of rights, therefore excluding other television channels from an important part of the market. Exclusivity, however, can be an appropriate way for recently launched broadcasters to ensure profitability in their first years of existence and to gather financial strength and momentum on the market. This will also be the case if such new broadcaster introduces new and expensive technology and needs a long period of exclusivity to recover substantial investment costs.

The conditions of transmitting matches of the 1998 football World Cup in France gave rise to a dispute between *Canal+*, a French programme bundle transmitted by digital satellite, and two public service channels : *France 2* and *France 3*. *Canal +* questioned whether said public service channels should be allowed to enter into an exclusive carriage contract with *TPS*, another programme bundle. *Canal +* requested a court injunction against *France 2* broadcasting World Cup football fixtures on the Superfoot 98 programme, a programme in wide-screen (16/9) format created by *France 2* and *France 3* and dedicated entirely to broadcasting all World Cup matches on the *TPS* service at no extra cost to subscribers. *Canal +* argued in particular that Superfoot 98 had been created in violation of article 3§12 of the European Broadcasting Union statutes which prohibits to give programme broadcasting rights to "another broadcasting organisation". In a judgement rendered on 25 May 1998, the Commercial Court of Paris considered however that Superfoot 98, a temporary channel under the editorial responsibility of *France 2*, limited to showing football during the World Cup, did not qualify as a broadcasting organisation as under the "Television Without Frontiers" Directive, namely a physical or moral person having editorial responsibility for scheduling and broadcasting programmes²⁹.

Protection of Minors

"The development of the audiovisual and information services industry in the European Union requires not only the right economic and political conditions but also a certain level of protection for the general interests of the European citizen", stressed the European Commission in a Communication on the follow-up to a Green Paper on the protection of minors and human dignity in European audiovisual services³⁰. The digitalisation of broadcast media and networks offers great opportunities for the production and broadcasting of audiovisual programmes through a large range of new media, such as pay-per-view and video-on-demand services and the creation of new channels with targeted contents. All these new services are often more accessible to customers and less easy to control. As stated by the European Commission, the recent development of the broadcasting sector makes it more difficult for any regulatory authority to monitor the way broadcasters comply with programming standards based upon cultural sensitivities³¹.

In this context, Article 22 of the "Television Without Frontiers" Directive makes a distinction between programmes that are subject to an absolute ban, and those that may be broadcast if appropriate technical means are used. As regards the first category, Member States must take appropriate measures to ensure that television broadcasts do not include programmes which might "seriously impair the physical, mental or moral development of minors", in particular programmes involving pornography or gratuitous violence. Member States must also ensure that television broadcasts do not contain any incitement to hatred on grounds of

²⁹ See IRIS 1998-7: 7 for more details of the case.

³⁰ Commission Communication to the European Parliament, the Council and the Economic and Social Committee on the follow up to the *Green Paper on the Protection of minors and human dignity in audiovisual and information services* (COM (96) 483). See also European Audiovisual Observatory, *Legal Guide to Audiovisual Media in Europe*, p. 21 (English version).

³¹ Commission of the European Communities, *Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: Study on Parental Control of Television Broadcasting*, Brussels 19 July 1999 (COM (99) 371 final).

race, sex, religion or nationality. Other televised programmes which are likely to impair (rather than "seriously" impair) the development of minors may be broadcast provided that it is ensured, by selecting the broadcasting time or by any technical measure, that minors will not normally hear or see these programmes; in addition, these broadcasts must, where they are not encrypted, be preceded by an acoustic warning or made clearly identifiable by the presence of a visual symbol throughout their duration.

As mentioned before, the "Television Without Frontiers" Directive allows Member States to derogate exceptionally from the general principle of freedom of reception and retransmission of television broadcasts, in order to take appropriate measures against broadcasters coming from another Member State who "manifestly, seriously and gravely" infringe Article 22 of the Directive. This is the only exception to the principle of free reception and re-transmission of broadcasts recognised by the Directive.

This derogation may be invoked provided that a specific procedure has been followed: first, the Member State concerned must notify in writing the foreign television channel and the European Commission of the alleged infringement and of the measures it intends to take if such infringement occurs again. Consultations must then be undertaken between the Commission and the transmitting State. If they do not lead to the conclusion of an amicable settlement within 15 days of the above notification, and the infringement persists, the receiving Member State may take unilateral provisional measures against the channel concerned. The compatibility of these measures with Community law is, however, reviewed by the Commission. Of course, the above procedure does not prevent the Member State having jurisdiction over the broadcaster to take any measure against the latter in accordance with its national law, since it is primarily the responsibility of that State to ensure compliance with the provisions of the Directive.

In 1997, the European Commission undertook to carry out an in-depth study of filtering systems of the "V-chip" type enabling parents or guardians to exercise control over the programmes watched by minors, according to a classification depending on the degree of violence, sex and other material considered harmful to the development of minors. Therefore, the Commission investigated the possible advantages and drawbacks of such systems in order to determine whether new television receivers should be equipped with these technical devices. The V-chip was introduced by the US Congress in 1996.

A study undertaken by the Centre for Socio-legal Studies of the University of Oxford on behalf of the European Commission³² comes, however, to the conclusion that the US approach to parental choice devices is not technically feasible in Europe due to major technological differences between the European and North American analogue broadcasting systems. Therefore, the study does not consider the V-chip as an adequate option for Europe, but recommends that emphasis be placed on mechanisms adapted to digital technology. With greater flexibility in approaches to enhancing parental choice, this new technological environment should provide a high protection level on the screen. Parental choice mechanisms, however, should not be considered as substitutes for broadcaster responsibility and government supervision.

On 19 July 1999, the Commission presented the main results of its investigation and its recommendations on parental control of television broadcasting³³. Following the advice expressed by the Oxford University, the Commission has concluded that the adoption of the "V-chip" technology is not technically feasible in Europe, and that technical devices cannot for the time being completely substitute for broadcaster responsibility. Furthermore, the

³² University of Oxford, *Parental Control of Television Broadcasting*, March 1999. See IRIS 1999-4: 4.

³³ Commission of the European Communities, *Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: Study on Parental Control of Television Broadcasting*, Brussels 19 July 1999 (COM (99) 371 final).

Commission recommends that rating systems be based on transparent criteria and be made more coherent, so that there is a consistent level of protection from harmful content in cinema, television, video games, and the Internet. Finally, although the European audiovisual market is characterised by a great cultural diversity, common descriptive criteria should be drawn up to the extent possible in order to facilitate the definition of a basic standard applicable in all Member States.

In France, the *Conseil Supérieur de l'Audiovisuel* (CSA) - the television supervision authority - has set up a system consisting of five symbols indicating the degree of violence appearing in television programmes:

- ◊ Green : General viewing audience ;
- Blue : Parental guidance advised ;
- ▲ Orange : Parental guidance required or restricted for viewers under 12;
- Red: Adult viewing restricted for viewers under 16;
- ✳ Purple : Restricted for viewers under 18.

This system appeared on French television channels in November 1996 and was harmonised in August 1998 with the symbols adopted by *Canal+*, which invented its own parental guidance system back in 1984 to alert its subscribers to the type of films shown on television. The above system remains, however, mostly used by French free television channels for fictions, and only rarely for magazines or documentaries³⁴.

On 27 October 1999, the British Board of Film Classification (BBFC)³⁵ published new draft guidelines for the classification of films and videos³⁶. These guidelines, which will be finalised after completion of a consultation with the public and the professionals of the industry, provide for 7 classification categories. The first three categories are advisory only:

U: "Universal": for audiovisual works suitable for all audiences;

Uc: This "Universal" category applies to videos that are particularly suitable for pre-school children;

PG: "Parental Guidance" means general viewing, but some scenes might not be suitable for children³⁷.

Three categories restrict viewing by age: "12" (Audiovisual works suitable only for 12 years and over³⁸), "15" (for 15 years and over³⁹) and "18" (suitable only for adults⁴⁰). Finally, the "R18" category is a special and restricted classification for videos whose content is mainly sexual activity and which may be available to adults only through licensed outlets.

In classifying films, videos or digital media, the BBFC gives consideration to the following fundamental principles: (i) the work should be allowed to reach the widest audience that is appropriate for its theme and treatment; (ii) adults should be free to choose what they see, providing in particular that it remains within the law and is not harmful; (iii) while precedent is an important factor, classification policy must continue to develop in line with changes in

³⁴ *La lettre du CSA* n° 113 – February 1999, *Signalétique jeunesse: le bilan de l'année 1998*.

³⁵ The British Board of Film Classification is an independent, non-governmental body which classifies films on behalf of the local authorities who license cinemas under the Cinema Acts, 1913, and videos, DVDs and digital games under the Video Recordings Act 1984.

³⁶ The draft guidelines are available on the website of the BBFC: <http://www.bbfc.co.uk/>. See also IRIS 1999-10: 15.

³⁷ The following films for example are considered by the BBFC to fall within this category: *The Mask of Zorro*, *Jurassic Park: The Lost World* and *Batman and Robin*.

³⁸ Examples given by the BBFC: *Tomorrow Never Dies*, *Titanic* and *Armageddon*.

³⁹ Examples given by the BBFC: *The Piano*, *Schindler's List* and *Saving Private Ryan*.

⁴⁰ Examples given by the BBFC: *Pulp Fiction*, *Trainspotting* and *Basic Instinct*.

public taste, attitudes and concerns; (iv) no two works are identical, and the context in which a subject matter is presented is central to the question of acceptability.

In Greece, the provisions of the Directive 97/36 have been transposed into domestic law by Presidential Decree N° 100/2000. The protection of minors have been reinforced by the compulsory introduction of a classification system applicable to all television programmes (except advertising spots and teleshopping). Different visual symbols and acoustic warnings have been adopted for each programme category. The visual symbol must remain visible for the entire duration of the programme or for a specific period of time. The category of programmes, the visual symbols and acoustic warnings have been defined in a decision adopted by the Ministry for the Press and the Mass Media. The visual symbols are similar to those applied by French television channels and must be shown alongside the programmes published in newspapers and television magazines⁴¹.

Finally, it should be noted that further to the wide consultation triggered by the publication of the Green Paper on the Protection of Minors and Human Dignity in Audiovisual and Information Services⁴², the European Council adopted a Recommendation on 24 September 1998⁴³ as well as an Action Plan on Promoting Safer Use of the Internet⁴⁴.

Television Advertising, Teleshopping and Sponsorship

The "Television Without Frontiers" Directive lays down rules concerning the percentage of advertising permitted on the screen, the quantity and form of advertising information, as well as rules applicable to the content and presentation of advertising on television. Article 18 of the Directive sets both daily and hourly limits: the share of transmission time devoted to advertising and teleshopping spots must neither exceed 20% of the daily broadcasting time, nor 20% of any given clock hour. Furthermore, time reserved to advertising may in any event not exceed 15% of the total daily transmission time.

A number of restrictions on television advertising and teleshopping are set by the Directive. Article 13 provides that cigarettes and other tobacco products may not be promoted on the screen. According to Article 15 of the Directive, the promotion of alcoholic beverages is permitted under certain conditions: in particular, it shall not link the consumption of alcoholic beverages to enhanced physical performance or to driving; it shall not claim that alcohol has any therapeutic qualities or that it contributes towards social or sexual success, it shall neither encourage immoderate consumption of alcohol nor place emphasis on high alcoholic content as being a positive quality of such beverages.

In addition, television advertising and teleshopping must not prejudice respect for human dignity, nor include any discrimination on grounds of race, sex or nationality, nor even be offensive to religious and political belief⁴⁵. Also specific provisions have been adopted with a view to protecting minors from certain forms of advertising and teleshopping; for instance, promotion of alcoholic beverages aimed specifically at minors or depicting minors consuming

⁴¹ See IRIS 2000-4: 8. In Germany, the revised *Rundfunkstaatsvertrag* (Agreement between the Federal States on Broadcasting) also contains a provision on television warning to protect minors (see IRIS 2000-2: 5 and IRIS 1999-5: 11). For Austria, see the Amendment of the Broadcasting Law introducing optical identification of programmes considered unsuitable for young persons, described in IRIS 1999-1: 9.

⁴² COM (96) 483 final.

⁴³ Council Recommendation of 24 September 1998 on *the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity*, OJ L270 of 7 October 1998, p. 48.

⁴⁴ Decision N° 276/1999/EC of the European Parliament and of the Council of 25 January 1999 adopting a *Multiannual Community Action Plan on promoting safer use of the Internet by combating illegal and harmful content on global networks*. For more detail on the Action Plan, see European Audiovisual Observatory, *Legal Guide to Audiovisual Media in Europe* pp. 1 et seq. (English version). See also the conclusions of the Council of European Union of 17 December 1999 regarding the protection of minors in the framework of the developments in the digital audiovisual services, summarised in IRIS 2000-2: 3.

⁴⁵ Art 12, Directives 89/552 and 97/36.

these beverages is prohibited⁴⁶. Likewise, according to Article 16 of the Directive, television advertising and teleshopping may not encourage minors to buy products or services by exploiting their inexperience or credulity.

According to Article 11 (1) of the Directive 97/36, advertising and teleshopping spots may be inserted during television programmes provided that the integrity and value of these programmes - taking into account natural breaks in, and the duration and nature of, the broadcasts - and the interests of rights holders are not prejudiced. Sports programmes and performances containing intervals may not be interrupted outside such intervals⁴⁷. Moreover, news and current affairs programmes, as well as documentaries, religious programmes and children's programmes, may not be interrupted by advertising or teleshopping when their scheduled duration does not exceed 30 minutes⁴⁸.

Article 11 (3) provides that feature films and television movies – excluding series, serials, light entertainment programmes and documentaries – with a scheduled duration exceeding 45 minutes may be interrupted once for each period of 45 minutes. A further interruption is authorised if their duration is at least 20 minutes longer than two or more complete periods of 45 minutes. In addition, a period of at least 20 minutes must elapse between each successive advertising or teleshopping break within the programme⁴⁹.

In a judgement rendered on 28 October 1999⁵⁰, the European Court of Justice ruled that, according to Article 11 (3) of the Directive, the calculation of scheduled transmission times for any given programme must include advertising featured following the grossed-up principle. In accordance with Article 3 of the Directive, the Member States, however, are allowed to enact stricter rules in this respect for broadcasters coming under their jurisdiction provided that such rules abide by all other relevant provisions of Community law. The Member States may therefore adopt the net principle for said broadcasters so that the time devoted to advertising is not taken into account in the calculation of the scheduled transmission time.

When the first "Television Without Frontiers" Directive was adopted in 1989, teleshopping was in its infancy in Europe. While being expressly excluded from the definition of television advertising under Article 1 (b) of Directive 89/552, teleshopping was taken into account for calculating the time devoted to advertising within the meaning of Article 18 of the Directive, which provided that "forms of advertisements such as direct offers to the public for the sale, purchase or rental of products or for the provision of services shall not exceed one hour per day". Five years later, the Directive was overtaken by events as many channels were devoting more time to teleshopping, which was therefore in breach of the Directive if such programmes were aimed at an international audience. Rules governing teleshopping were therefore introduced by Directive 97/36. According to Article 18a (1), teleshopping windows on generalist channels must be clearly identified and must have a minimum duration of 15 minutes. Their overall duration may not exceed 3 hours per day, and the number of windows is limited to 8 per day⁵¹. Further, television channels exclusively dedicated to teleshopping are subject to most of the provisions of the Directive, except those relating to the promotion of European programmes⁵².

In practice, the application of the rules relating to advertising has sometimes been restricted; a number of complaints have indeed been lodged particularly by consumer associations that claimed that the daily and hourly limits as well as the number and types of advertising breaks allowed on the screen have been systematically exceeded, and that the rules on content and presentation of advertising messages have been broken. The Commission intends therefore to increase its powers to monitor and investigate complaints in that field in order to ensure that the provisions of the Directive are fully complied with by all Member States.

⁴⁶ Art 15, Directives 89/552 and 97/36.

⁴⁷ Art 11 (2), Directive 97/36.

⁴⁸ Art 11 (5), Directive 97/36.

⁴⁹ Art 11 (4), Dir 97/36.

⁵⁰ Case C-6/98 *Arbeitsgemeinschaft Deutscher Rundfunkanstalten (ARD) v. ProSieben Media AG*. See IRIS 1999-10: 5.

⁵¹ Art 18a (2), Directive 97/36.

⁵² Art 19, Directive 97/36.

A number of restrictions have also been placed on sponsored television programmes by Article 17 of the "Television Without Frontiers" Directive. Sponsors are not allowed to use these broadcasts to promote their products and services on the screen. They may not influence the content and scheduling of the programmes in such a way as to affect the responsibility and editorial independence of the broadcaster. Furthermore, news and current affairs programmes may not be sponsored. In addition, sponsored television programmes must be clearly identified as such by the name and/or the logo of the sponsor at the beginning and/or the end of the programmes.

Additional specific restrictions on television sponsorship have been inserted in Article 17 of Directive 97/36: firstly, television broadcasts may not be sponsored by cigarettes and other tobacco products manufacturers. Secondly, pharmaceutical companies may sponsor programmes and promote their name and image, but they are not allowed to promote specific medicines or medical treatments. According to the European Court of Justice, there is, however, no limitation on the number of times a sponsor may be mentioned during a specific sponsored programme⁵³.

Right of Reply and Access to Justice

Article 23 (1) of the "Television Without Frontiers" Directive provides that, without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any individual or legal entity, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies. This right applies to all broadcasters coming under the jurisdiction of a Member State. However, an application for the exercise of the right of reply may be rejected on justified grounds, in particular where it would involve a punishable act, or would render the broadcaster liable to civil law proceedings, or would transgress standards of public decency.

The Member States must ensure that the actual exercise of the right of reply is not hindered by the imposition of unreasonable terms or conditions. The reply must be broadcast within a reasonable period of time. The Member States must also adopt the necessary measures and procedures – including judicial review - to guarantee the appropriate exercise of the right of reply.

Furthermore, the Member States must introduce appropriate procedures to enable third parties concerned, including nationals of other Member States, to initiate proceedings before the competent authorities to ensure compliance with the provisions of the Directive⁵⁴.

Monitoring and Implementation of the Directive

European directives are adopted by the Community legislator, i.e. the European Parliament and the Council of the European Union. As a rule, the Member States must incorporate them into their national law within a specified period of time, ranging from several months to several years. The application of European directives is, therefore, the responsibility of each Member State.

The measures provided for by the "Television Without Frontiers" Directive must be complied with by all Member States; the European Commission oversees their application and may refer any failure to abide by the provisions of the Directive to the European Court of Justice. The Member States must transpose Directive 97/36 not later than 30 December 1998.

⁵³ Case C-320/94 RTI and others v. *Ministero delle Poste e Telecomunicazioni*[1996] ECR I-6471.

⁵⁴ Art. 3 (3), Directive 97/36.

In some European countries, such as Spain, Portugal and Ireland, the transposition of European directives into national law represents the main, if not the only legal instrument ensuring the promotion of European films on television. However, in most Member States, the minimum rules provided for by the "Television Without Frontiers" Directive are supplemented by a more refined regulatory framework. This is, for example; the case in the United Kingdom, France, and Italy, where national law obliges broadcasters to invest in the production of films. Such measures have, of course, a positive impact on the volume of investment in the film industry of the countries concerned⁵⁵.

Article 26 of Directive 89/552 provides that, not later than by the end of the fifth year after the date of adoption of the Directive and every two years thereafter, the European Commission must submit to the European Parliament, the Council of the European Union and the Economic and Social Committee a report on the implementation of the Directive in general, and make any proposal necessary to adapt it to developments of the television broadcasting sector.

The first general report covered the period from the adoption of Directive 89/552 in October 1989 to the end of 1994⁵⁶. The conclusions of this report led to the adoption of Directive 97/36 by the European Parliament and the Council.

The second report issued by the European Commission covers the period from 1 January 1995 until 30 July 1997, when the revised Directive came into force⁵⁷. This report attempts to give an overall view of the progress achieved in establishing the standards set by the Directive, particularly through the abundant case law issued by the European Court of Justice. The report also evidences that the principle of free movement of television programmes within the European Union has been established and that the average figure for compliance by the Member States with the provisions of the Television Without Frontiers Directive was overall satisfactory.

In addition to the above mentioned general reports, the European Commission must also deliver specific reports relating to the application of Articles 4 and 5 of the Directive concerning quota requirements for European works and independent producers; these reports must be based on statistical information provided by the Member States.

The case law of the European Court of Justice also plays an important role in the interpretation of the Directive, and actively contributes to its implementation by the Member States. This case law has contributed gradually to the establishment of a free audiovisual area in the European Union, favouring thereby the development of a rapidly expanding broadcasting industry. As explained above, a large number of the judgements that have been rendered by the Court of Justice relates to the criteria determining the Member States' jurisdiction over broadcasters. Decisions have also concerned advertising, the principle of free circulation of broadcasts, as well as the transposition of the Community regulations into national law.

Finally, it should be noted that, in accordance with article 23a of Directive 97/36, a Contact Committee has been set up to facilitate and monitor the effective implementation of the Directive by organising regular consultations with professionals from across the sector on any practical problems which might arise from its application. This Committee shall act as a forum for the exchange of views and the analysis of developments in the broadcasting sector. It shall also foster the exchange of information between the Member States and the

⁵⁵ Centre national de la cinématographie / European Audiovisual Observatory, *Public Aid Mechanisms for the Film and the Audiovisual Industry in Europe*, Vol. I: *Comparative Analysis of National Aid Mechanisms*, 1998, p. 100.

⁵⁶ COM (95) 86 final of 31 May 1995.

⁵⁷ COM (97) 523 final.

Commission on technological developments and on the legislation governing television broadcasting. The Committee may also give opinions on the application by the Member States of the provisions of the "Television Without Frontiers" Directive and may discuss the results of consultations held by the Commission with representatives of associations of broadcasters, producers, consumers, manufacturers, service providers, trade unions and the artistic community in general. Chaired by the European Commission and composed of representatives of the competent authorities of the Member States of the European Union, the Committee may be convened at the request of any national delegation.

Conclusion

The "Television Without Frontiers" Directive represents an important step towards the liberalisation of the broadcasting sector in Europe. As pointed out by Mr. Marcelino Oreja at the Munich *Medientage* of 14 October 1997⁵⁸, "In the age of digital technology, it provides a sound legal framework for television broadcasters to be able to expand their activities in the European Union". A set of minimum regulatory standards in the fields of advertising, protection of minors, sponsorship and right of reply have been introduced to lead the Member States of the European Union to harmonise their national rules up to the minimum level required. The "Television Without Frontiers" Directive also seeks to meet cultural objectives by encouraging the production and distribution of European audiovisual works, including feature films, through European and independent works quotas. Furthermore, one of the most significant innovation of the Directive adopted on 30 June 1997 is the guarantee of free access for the public to major events, most particularly sports events with wide coverage and public appeal.

The large-scale strategic alliances that have transformed the European audiovisual landscape in recent years, as well as the rapid growth in audiovisual revenues expected for the forthcoming years, should strengthen the potential of the broadcasting industry to support and invest in the production of European cinematographic works of high artistic and commercial quality - works, which can reach the critical mass audience required to be competitive on the international markets. With the "Television Without Frontiers" Directive, the European Union has therefore undoubtedly made a great step towards freedom of movement for television programmes and has laid the foundation for a more consolidated and structured European audiovisual industry. The success of the measures adopted by the Community legislator will however mainly depend on his ability to quickly adapt European legislation to the ever-increasing progress of communication and information technologies.

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⁵⁸ Marcelino Oreja (former member of the European Commission, Responsible for Communications, Information, Culture and Audiovisual Media), European Trump Cards in a Game with Global Players: EU Audiovisual Policy.